

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* I. KNIGHT, Minor.

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DEPARTMENT OF HEALTH AND HUMAN  
SERVICES,

Petitioner-Appellee,

v

SHAUN TUCKER, formerly known as SHAUN  
KNIGHT,

Respondent-Appellant,

and

GEORGE KNIGHT,

Respondent.

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UNPUBLISHED  
October 20, 2016

No. 332433  
Jackson Circuit Court  
Family Division  
LC No. 14-003196-NA

Before: K. F. KELLY, P.J., and O'CONNELL and BOONSTRA, JJ.

PER CURIAM.

Respondent-mother, S. Tucker, appeals as of right the termination of her parental rights to her minor child under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (risk of harm to the child if returned to the parent). The trial court also terminated the parental rights of the child's father during the proceedings, from which the father does not appeal. We affirm.

**I. FACTUAL BACKGROUND**

The petition in this case alleged that Tucker suffered from cognitive limitations and was unlikely to be able to protect the child from the father, who had previously been convicted of sexually penetrating his four-year-old daughter (the child's half-sister). The trial court placed the child in Tucker's care and ordered that the father have no contact with the child. After the father's parental rights to the child were terminated, Tucker struggled with denying the father access to the child, and the trial court removed the child from Tucker's care.

During the subsequent proceedings, the Department provided Tucker with psychological and parenting services intended to address her parenting deficiencies. Tucker clearly loved the child and participated in every service offered. However, Tucker engaged in inappropriate interpersonal relationships, was unable to recognize the child's cues, and had unrealistic expectations of the child's stages of development. The Department petitioned to terminate Tucker's parental rights, contending that Tucker had not been able to benefit from the services that were tailored to address Tucker's cognitive limitations. The trial court ultimately terminated Tucker's parental rights. Tucker now appeals, contending that the trial court violated her constitutional right to parent her child.

## II. PRESERVATION AND STANDARDS OF REVIEW

We review for clear error whether a trial court engaged in reasonable efforts to reunify a child with his or her parent. *In re Mason*, 486 Mich 142, 152, 166; 782 NW2d 747 (2010). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Id.*

A parent must raise an issue with accommodations in a service plan well before a dispositional hearing to preserve the issue. *In re Hicks/Brown Minors*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2016); slip op at 9-10; *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). In this case, Tucker's cognitive limitations were at issue from the point of the initial petition. Accordingly, this issue is preserved.

## III. ANALYSIS

Tucker contends that the trial court violated her constitutional right to parent her child by terminating her parental rights solely because she suffered from cognitive limitations. We disagree. The trial court's efforts to reunify Tucker and the child accounted for her cognitive limitations.

Parents have a significant constitutional liberty interest in the care and custody of their children. *In re Miller*, 433 Mich 331, 346; 445 NW2d 161 (1989); *MLB v SLJ*, 519 US 102, 119; 117 S Ct 555; 136 L Ed 2d 473 (1996). This right entitles the parent to due process before the state may remove the parent's child from his or her custody. *In re Sanders*, 495 Mich 394, 403-404; 852 NW2d 524 (2014). The Department must make reasonable efforts to reunite a child with his or her family unless aggravating circumstances are present. MCL 712A.19a(2). But once the Department has established that a parent is unfit, the parent's rights yield to the state's interests in protecting the child. *Sanders*, 495 Mich at 409-410; *Stanley v Illinois*, 405 US 645, 652-653; 92 S Ct 1208; 31 L Ed 2d 551 (1972).

When a disabled parent is a party to child protective proceedings, the Department must make special accommodations to address the parent's disability. *Hicks/Brown*, \_\_\_ Mich App at \_\_\_; slip op at 11. The Department must tailor its service plan to address the cognitively disabled parent's individual disabilities. *Id.* at \_\_\_; slip op at 11. The Department should use agencies and service providers that are experienced in dealing with persons with intellectual disabilities. *Id.* at \_\_\_; slip op at 12. Finally, the Department should give disabled parents additional time to benefit from services. *Id.* "In the event that reasonable accommodations are

made but the parent fails to demonstrate sufficient benefit such that he or she can safely parent the child, then the court may proceed to termination.” *Id.* at \_\_\_; slip op at 16.

In this case, Karen Cowen, the child’s case worker, testified that she provided Tucker with more extensive and extended services to assist with Tucker’s cognitive limitations. Cowen tailored the services to Tucker’s needs and selected services that specifically assisted cognitively disabled individuals. Cowen selected psychologist Dr. Shanon Lowder because of her experience working with cognitively delayed individuals, and selected the Home Again service with Corey Duncan because it was a parenting service that did not take place in a classroom setting but instead worked with individuals in their homes.

Dr. Lowder testified that she is a limited licensed psychologist who specializes in child abuse and neglect. Dr. Lowder performed a psychological evaluation on Tucker and determined that Tucker’s IQ score placed her in the borderline intelligence range. This meant that Tucker had a limited cognitive capacity and would take longer to understand things. Accordingly, Dr. Lowder adjusted her methodology to address Tucker’s functioning by slowing things down, asking lots of questions to make certain that Tucker understood her, and using real-life examples to demonstrate concepts. Despite this, some things simply did not “take”—Tucker “temporarily would gain some things about safety issues, but then, I think, maybe a couple weeks later she’d kind of forget she had learned that stuff.” Dr. Lowder opined that additional therapy would not help Tucker’s ability to parent.

Duncan testified that he is a parenting coach at the Home Again program. Duncan’s goals were to teach Tucker to have appropriate expectations of the child’s development and to increase her empathy to the child’s cues. According to Duncan, he was specifically instructed in how to assist Tucker despite her lower functioning. Duncan took his time explaining concepts, checked for understanding, engaged in extensive review, and extended the time that the program worked with Tucker. Tucker demonstrated a desire and willingness to learn, but she had difficulty retaining information. Duncan opined that Tucker would not be able to successfully complete the program in a reasonable amount of time, and he did not have any other tools or methods available that would have assisted Tucker’s ability to parent.

The trial court found that Cowen did everything within the Department’s capacity to tailor its services to Tucker’s cognitive abilities. Despite this, Tucker was not able to safely, proactively parent the child or anticipate possible harms. The trial court found that Tucker loved the child and actively participated in services, but she was simply unable to benefit from them and was not able to understand how her behavior put the child at risk. The trial court found that there were no available services that would allow Tucker to effectively parent the child.

We are not definitely and firmly convinced that the trial court made a mistake when it found that the Department engaged in reasonable efforts to reunite Tucker with the child. In this case, the Department ensured that Tucker received individualized services, utilized agencies and service providers that were experienced in assisting individuals with cognitive limitations and adjusted their services to meet her needs, and gave Tucker additional time and extended services to allow Tucker to benefit. In essence, the Department and trial court followed all the particulars in this Court’s *Hicks/Brown* decision regarding accommodations for cognitively disabled parents. Despite these efforts, the professionals opined that Tucker would not benefit from any

additional services. We conclude that the trial court properly proceeded to termination in this case because, despite the Department's efforts, Tucker failed to demonstrate a sufficient benefit that she could safely parent the child. The trial court did not unconstitutionally deprive Tucker of her right to parent her child.

We affirm.

/s/ Kirsten Frank Kelly

/s/ Peter D. O'Connell

/s/ Mark T. Boonstra